

MORRIS PETERSON  
Steve Morris, Bar No. 1543  
Email: sm@morrislawgroup.com  
Rex D. Garner, Bar No. 9401  
Email: rdg@morrislawgroup.com  
900 Bank of America Plaza  
300 South Fourth Street  
Las Vegas, Nevada 89101  
Telephone: (702) 474-9400  
Facsimile: (702) 474-9422

Attorneys for Plaintiff  
Platinum Partners Value Arbitrage Fund LP

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

PLATINUM PARTNERS VALUE	)	CASE NO: 2:09-cv-02459-PMP-PAL
ARBITRAGE FUND LP,	)	
	)	
Plaintiff,	)	<b>DISCOVERY PLAN AND</b>
v.	)	<b>SCHEDULING ORDER</b>
	)	
GAYLA SUE LEVIN,	)	
	)	<b>(SPECIAL SCHEDULING REVIEW</b>
	)	<b>REQUESTED)</b>
Defendant.	)	

Pursuant to Federal Rule of Civil Procedure 26(f), plaintiff and defendant, through their respective counsel, submit the following proposed Discovery Plan and Scheduling Order with their respective positions and request special scheduling review.

1. **Meeting.** Pursuant to Fed. R. Civ. P. 26(f) and LR 26-1(d), a meeting was held on April 8, 2010 and was attended by Rex Garner for plaintiff and John Gutke for defendant.

2. **Initial Disclosures.** The parties will exchange by April 22, 2010 the information required by Fed. R. Civ. P. 26(a)(1).

1           3.     **Discovery Plan & Parties' Positions.** The parties set forth their  
2 respective positions below. Plaintiff believes this case is a simple contract case  
3 involving a guarantee of a debt and therefore little, if any, discovery is required.  
4 Defendant believes the case requires the ordinary 180-day schedule in order for  
5 discovery to be conducted on the factual basis of Plaintiff's claims, alleged damages,  
6 and on Defendant's affirmative defenses.

7           Plaintiff will soon move to strike/dismiss several of Defendant's  
8 affirmative defenses. The deadline for doing so is April 14, 2010 according to the  
9 stipulation and order dated March 26, 2010 [Doc. 11]. Defendant will agree to a  
10 discovery period of less than 180 days if the Court's ruling on Plaintiff's motion  
11 limits the scope of discoverable issues significantly, but in any event Defendant  
12 requests a discovery period of at least 120 days.

13           a.     Subjects of Discovery and Discovery Cut-Off Date. Plaintiff  
14 maintains that no discovery will be needed in this action to recover on a written  
15 guaranty. Plaintiff intends to file, on or before April 14, 2010, one or more motions  
16 seeking dismissal of various affirmative defenses asserted by defendant. After the  
17 Court's decision on those motions, should any portion of the case remain extant and  
18 warrant discovery, Plaintiff requests that any such discovery be concluded within  
19 60 days of the entry of an Order deciding such motions. Any discovery demands  
20 may be served immediately.

21           Defendant maintains that the ordinary 180-day discovery period is  
22 appropriate, but if Plaintiff's motion to strike/dismiss affirmative defenses is  
23 granted and the scope of discoverable issues is limited by order of the Court,  
24 Defendant would be amenable to a discovery period of no less than 120 days.

25           b.     Amending the Pleadings and Adding Parties. The date for filing  
26 motions to amend the pleadings or to add parties shall not be later than 30 days  
27 prior to the close of discovery.

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1 c. Expert Witness Disclosures. Plaintiff believes no expert  
2 testimony will necessary or appropriate. Defendant believes that initial expert  
3 disclosures should be 60 days before the discovery cut-off date and rebuttal expert  
4 disclosures 30 before the discovery cut-off date.

5 d. Dispositive Motions. Dispositive motions shall be filed not later  
6 than 30 days after the discovery cut-off date.

7 e. Pretrial Order. The Joint Pretrial Order shall be filed not later  
8 than 30 days after the date set for filing dispositive motions. In the event that  
9 dispositive motions are filed, however, the date for filing the Joint Pretrial Order  
10 shall be suspended until 30 days after a decision on the dispositive motions or  
11 further order of the Court.

12 f. Rule 26(a)(3) Disclosures. The disclosures required by Rule  
13 26(a)(3) and any objection thereto shall be included in the Pre-trial order.

14 4. **Other Items.**

15 a. Interim Status Report. The parties shall file the interim status  
16 report required by LR 26-3 by June 1, 2010. The undersigned counsel certify that  
17 they have read LR 26-3 and that this date is no later than 60 days before the  
18 discovery cut-off date to be determined as in Section 3(a) above.

19 b. Court Conference. The parties do not request a conference with  
20 the Court before entry of the scheduling order, but believe it would be expedient to  
21 wait until the Court rules on Plaintiff's motion to strike/dismiss Defendant's  
22 affirmative defenses prior to entering any discovery scheduling order, as the  
23 outcome of that motion will affect the scope and length of discovery.

24 c. Later Appearing Parties. A copy of this discovery plan and  
25 scheduling order shall be served on additional defendants, if any, within five  
26 business days of their first appearance. If a later appearing party is represented by  
27 one of the undersigned counsel, that counsel shall be solely responsible for  
28

providing the party with a copy of this discovery plan and scheduling order. This discovery plan and scheduling order shall apply to such later-appearing part[y][ies], unless the Court, on motion and for good cause shown, orders otherwise.

d. Extensions or Modifications of the Discovery Plan and Scheduling Order. LR 26-4 governs modifications or extensions of this discovery plan and scheduling order. Any stipulation or motion must be made not later than 20 days before the discovery cut-off date and comply fully with LR 26-4.

APPROVED AS TO FORM AND CONTENT

/s/Rex D. Garner  
Attorney for Plaintiff

/s/John Gutke  
Attorney for Defendant

Date: April 14, 2010

Date: April 14, 2010

**ORDER**

IT IS SO ORDERED.

UNITED STATES [DISTRICT][MAGISTRATE] JUDGE

DATED: \_\_\_\_\_